

# Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Bill

## Contents

Clause	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1.	Short title and commencement ..... C2143
2.	Interpretation ..... C2143
3.	Application ..... C2149
<b>Part 2</b>	
<b>Regulations</b>	
4.	Secretary for Transport and Logistics may make regulations ..... C2151
5.	Regulations under section 4—general powers ..... C2153
<b>Part 3</b>	
<b>Inspection</b>	
6.	Authorized officers ..... C2159
7.	Delegation by Director ..... C2159
8.	Power to board ships ..... C2159
9.	Power to enter premises used as ship recycling facilities other than in emergencies ..... C2161

Clause	Page
10. Power to enter premises used as ship recycling facilities in emergencies .....	C2161
11. Power to enter premises used as ship recycling facilities with warrant .....	C2163
12. Powers to inspect, examine, etc. ships and premises used as ship recycling facilities .....	C2167
13. Deficiency revealed in relation to ships in exercise of powers under section 12(1) .....	C2171
14. Deficiency revealed in relation to premises used as ship recycling facilities in exercise of powers under section 12(1) .....	C2173
15. Obstruction of authorized officers, providing false information, making false statements or signing false declarations .....	C2175
16. Reasonable excuse .....	C2175

**Part 4**

**Exemption**

17. Director may grant exemptions .....	C2179
---	-------

**Part 5**

**Miscellaneous**

18. Access to Convention .....	C2181
--------------------------------	-------

# A BILL

## To

Provide for the safe and environmentally sound recycling of ships; and  
to provide for related matters.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

1. **Short title and commencement**

- (1) This Ordinance may be cited as the Merchant Shipping (Safe and Environmentally Sound Recycling of Ships) Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Transport and Logistics by notice published in the Gazette.

2. **Interpretation**

In this Ordinance—

*authorized officer* (獲授權人員) means a public officer authorized under section 6(1);

**Convention** (《公約》) means the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009, as from time to time revised or amended by any revision or amendment to any provision of the Convention that applies to Hong Kong;

**Convention country** (公約國) means a country that is a party to the Convention;

**Director** (處長) means the Director of Marine;

**domestic premises** (住宅處所) means any premises used wholly or mainly for residential purposes and constituting a separate household unit;

**Guidelines** (指引) means any guidelines developed by the International Maritime Organization as revised or amended from time to time;

**hazardous material** (有害材料) means any material or substance that is liable to create hazards to human health or the environment within the meaning of Article 2 of the Convention;

**Hong Kong ship** (香港船舶) means a ship that is registered in Hong Kong under the Merchant Shipping (Registration) Ordinance (Cap. 415);

**international voyage** (國際航程) means—

- (a) a voyage between Hong Kong and a port outside the People's Republic of China; or
- (b) a voyage between a port in a Convention country and a port outside that country (whether in another Convention country or not);

**non-domestic premises** (非住宅處所) means any premises other than domestic premises;

**non-Hong Kong ship** (非香港船舶) means a ship other than a Hong Kong ship;

**operator** (營運者), in relation to a ship recycling facility—

- (a) means the owner of the facility; and
- (b) includes any other person who has assumed responsibility for the operation of the facility from the owner;

**recognized organization** (認可機構) means an organization recognized under the regulations made under section 4;

**ship** (船、船舶)—

- (a) means a vessel of any type operating, or having operated, in the marine environment; and
- (b) includes—
  - (i) a submersible;
  - (ii) a floating craft;
  - (iii) a floating platform;
  - (iv) a self-elevating platform;
  - (v) a floating storage unit;
  - (vi) a floating production storage and offloading unit; and
  - (vii) a vessel stripped of equipment or being towed;

**ship recycling** (拆船)—

- (a) means the activity of complete or partial dismantling of a ship on any premises in order to recover the components and materials of the ship for reprocessing and reuse, and the operations associated with that activity; but
- (b) does not include any further processing or disposal on any other premises located separately from the premises,

and **recycling of ship** (拆船) is to be construed accordingly;

***ship recycling facility*** (拆船設施)—

- (a) means a site, yard or facility used, or intended to be used, for ship recycling; and
- (b) includes the following premises or undertaking used, or intended to be used, for ship recycling—
  - (i) a floating dock;
  - (ii) a shipyard;
  - (iii) an industrial undertaking as defined by section 2(1) of the Factories and Industrial Undertakings Ordinance (Cap. 59).

### **3. Application**

- (1) This Ordinance applies to the following ships that are engaged, or have been engaged, in international voyages—
    - (a) a Hong Kong ship wherever it is;
    - (b) a non-Hong Kong ship that is within the waters of Hong Kong;
    - (c) a ship owned or operated by the Government that is used on any service (excluding one that is used only on government non-commercial service).
  - (2) However, this Ordinance does not apply to—
    - (a) a warship;
    - (b) a naval auxiliary;
    - (c) a ship of less than 500 gross tonnage; or
    - (d) any other ship owned or operated by a government that is used only on government non-commercial service.
-

## Part 2

### Regulations

#### 4. Secretary for Transport and Logistics may make regulations

- (1) The Secretary for Transport and Logistics may make regulations—
  - (a) to provide for the safe and environmentally sound recycling of ships;
  - (b) to give effect to the Convention;
  - (c) to require compliance with any international agreement and any of its referenced international instruments (whether made by a resolution or otherwise) that relate to the safe and environmentally sound recycling of ships, as revised or amended from time to time; and
  - (d) to provide for any matters required or permitted to be prescribed under this Ordinance.
- (2) Subsection (3) applies in relation to—
  - (a) the regulations made under subsection (1) for giving effect to a provision of the Convention, or of an international agreement (*specified provision*); or
  - (b) the regulations made under subsection (1) that refer to a provision of an international instrument referenced in the Convention or the international agreement (*referenced provision*).
- (3) The regulations referred to in subsection (2) may—
  - (a) set out or refer directly to the specified provision or referenced provision; and

- (b) specify amendments, modifications or adaptations subject to which the specified provision or referenced provision is to have effect.
- (4) If a provision of any Guidelines (***Guidelines provision***) is relevant to the specified provision, the Guidelines provision may also be set out or referred to in the regulations made under subsection (1).
- (5) In subsection (2)(a) and (b), a reference to an international agreement or international instrument is a reference to the agreement or instrument (whether made by a resolution or otherwise) as revised or amended from time to time.

**5. Regulations under section 4—general powers**

- (1) Without limiting section 4, the regulations made under that section may—
  - (a) confer on the Director any power that may be exercised by—
    - (i) an Administration; or
    - (ii) a Competent Authority,  
under the Convention;
  - (b) empower the Director to recognize any organization to perform the functions relating to ships and ship recycling facilities that may be performed by the Director under this Ordinance;
  - (c) empower the Director to request the government of a Convention country to perform any act that may be performed by the Director under this Ordinance;
  - (d) provide for matters relating to the approval or authorization of a ship recycling facility and the withdrawal or cancellation of the approval or authorization;



- (e) provide for a deficiency referred to in sections 13(1) and 14(1);
  - (f) provide for matters relating to—
    - (i) the issue, endorsement, amendment, withdrawal and renewal of a specified document in electronic form;
    - (ii) the extension or suspension of the validity of a specified document in electronic form;
    - (iii) the keeping, use or any other matters relating to a specified document that is issued, endorsed, amended, withdrawn or renewed in electronic form; and
    - (iv) the keeping, use or any other matters relating to a specified document the validity of which is extended or suspended in electronic form;
  - (g) create offences for the purposes of this Ordinance and provide for a fine not exceeding \$500,000 and imprisonment not exceeding 3 years;
  - (h) empower the Director to charge fees and make provision for the recovery of such fees; and
  - (i) provide for appeal against a decision made by the Director under this Ordinance.
- (2) The regulations made under section 4 may amend the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) to make any decision made under this Ordinance subject to appeal under that Ordinance.
- (3) In this section—
- Administration** (主管機關), in relation to a ship, means the government of the state whose flag the ship is entitled to fly;

***certifying authority*** (認證機關), in relation to a specified document, means—

- (a) the Director; or
- (b) a recognized organization;

***Competent Authority*** (主管當局) means—

- (a) in relation to a ship recycling facility in Hong Kong—the Director; and
- (b) in relation to a ship recycling facility outside Hong Kong—the governmental authority or authorities designated by the Convention country in which the facility is operating as responsible for the duties related to the facility;

***specified document*** (指明文件) means a certificate or document—

- (a) that is referred to in the Convention;
  - (b) that may be issued, endorsed, amended, withdrawn or renewed under this Ordinance by a certifying authority; or
  - (c) the validity of which may be extended or suspended under this Ordinance by a certifying authority.
-

## Part 3

### Inspection

#### 6. Authorized officers

- (1) The Director may authorize in writing any public officer to be an authorized officer.
- (2) An authorized officer may exercise the powers or perform the duties that are conferred or imposed on the Director under this Ordinance.

#### 7. Delegation by Director

- (1) Subject to subsection (3), the Director may, either generally or in any particular case, delegate to any other public officer the exercise or performance on the Director's behalf of any of the functions conferred or imposed on the Director under this Ordinance.
- (2) If any function conferred or imposed on the Director under this Ordinance is exercised or performed by any other public officer, the Director is, unless the contrary is proved, regarded as having delegated under subsection (1) to the officer the exercise or performance of the function.
- (3) No delegation under subsection (1) is to be made of any power under this Ordinance to make subsidiary legislation.
- (4) In this section—  
*functions* (職能) includes powers and duties.

#### 8. Power to board ships

- (1) Any of the powers conferred by this section may be exercised for the purpose of ascertaining whether this Ordinance is being, or has been, complied with.

- (2) An authorized officer may—
  - (a) board a ship to which this Ordinance applies at any reasonable time; and
  - (b) take with the officer any other person to assist, and any equipment or materials required by, the officer for the purpose mentioned in subsection (1).

**9. Power to enter premises used as ship recycling facilities other than in emergencies**

- (1) For ascertaining whether this Ordinance is being, or has been, complied with, an authorized officer who has reasonable grounds to believe that any non-domestic premises are being used as a ship recycling facility for ships to which this Ordinance applies may, without warrant—
  - (a) enter the premises at any reasonable time; and
  - (b) exercise the powers specified in section 12(1).
- (2) An authorized officer entering the premises under subsection (1) must, if requested, produce the Director's authorization under section 6(1) for inspection.

**10. Power to enter premises used as ship recycling facilities in emergencies**

- (1) An authorized officer may, if satisfied that the conditions in subsection (2) are met, enter without warrant any non-domestic premises and exercise the powers specified in section 12(1).
- (2) The conditions are—
  - (a) that there are reasonable grounds to believe that the premises are being used as a ship recycling facility for ships to which this Ordinance applies;

- (b) that there are reasonable grounds to suspect that—
  - (i) a contravention of this Ordinance is being, or has been, committed on the premises; or
  - (ii) there is on the premises anything that constitutes, or is likely to constitute, evidence that a contravention of this Ordinance is being, or has been, committed; and
- (c) that—
  - (i) immediate entry into the premises is necessary for the protection of the environment against pollution by hazardous material, or of public health or from imminent risk of death or serious bodily injury of any person on the premises, in relation to ship recycling; or
  - (ii) there is any other reason to suggest that it would not be reasonably practicable to obtain a warrant in the circumstances of the case.
- (3) An authorized officer entering the premises under subsection (1) must, if requested, produce the Director's authorization under section 6(1) for inspection.

**11. Power to enter premises used as ship recycling facilities with warrant**

- (1) A magistrate may issue a warrant authorizing an authorized officer to enter any non-domestic premises or domestic premises, by force if necessary, if satisfied by information on oath—
  - (a) that—
    - (i) there are reasonable grounds to believe that the premises are being used as a ship recycling facility for ships to which this Ordinance applies;

- (ii) admission to the premises has been refused, or refusal is reasonably expected, and either—
      - (A) notice of the intention to apply for a warrant has been given to the occupier of the premises; or
      - (B) the giving of the notice would defeat the object of the entry;
    - (iii) it is not practicable to communicate with a person entitled to grant entry to the premises;
    - (iv) the premises are unoccupied, or the occupier is temporarily absent; or
    - (v) the case is urgent; and
  - (b) either or both of the following—
    - (i) that there are reasonable grounds to enter the premises for the purpose of ascertaining whether this Ordinance is being, or has been, complied with;
    - (ii) that there are reasonable grounds to suspect that—
      - (A) a contravention of this Ordinance is being, or has been, committed on the premises; or
      - (B) there is on the premises anything that constitutes, or is likely to constitute, evidence that a contravention of this Ordinance is being, or has been, committed.
- (2) An authorized officer entering any premises with a warrant issued under subsection (1) may exercise the powers specified in section 12(1).

- (3) Unless otherwise specified by the magistrate, a warrant issued under subsection (1) continues in force until—
  - (a) the expiry of 1 month after the date of issue of the warrant; or
  - (b) the purpose for the entry has been fulfilled, whichever is the earlier.
- (4) On leaving any unoccupied premises, the authorized officer must leave the premises as effectually secured against trespassers as the officer found the premises to be at the time of entry.

**12. Powers to inspect, examine, etc. ships and premises used as ship recycling facilities**

- (1) After boarding any ship under section 8 or entering any premises under section 9, 10 or 11, the authorized officer may—
  - (a) inspect the ship or the premises (whichever is applicable) for the purpose of ensuring compliance with the requirements of this Ordinance that are applicable to the ship or the ship recycling facility on the premises;
  - (b) make any examination and investigation as the officer considers necessary;
  - (c) take samples of any article or substance found on the ship or the premises that the officer may reasonably require for the inspection, examination or investigation;
  - (d) inspect, seize and remove from the ship or the premises any article or substance in respect of which the officer suspects on reasonable grounds that an offence under this Ordinance has been committed;

- (e) detain the article or substance for so long as is necessary—
  - (i) for the inspection, examination or investigation; and
  - (ii) to ensure that it is available for use as evidence in any proceedings for an offence under this Ordinance;
- (f) take any measurements and photographs, and make any recordings, that the officer may reasonably require for the inspection, examination or investigation;
- (g) require the ship or the premises, or any part of the ship or the premises, or anything on the ship or the premises, to be left undisturbed (whether generally or in particular respects) for so long as is necessary for the inspection, examination or investigation;
- (h) require any person whom the officer reasonably believes is able to give any information relevant to the inspection, examination or investigation—
  - (i) to attend at a place and time specified by the officer;
  - (ii) to answer the questions that the officer considers appropriate to ask; and
  - (iii) to sign a declaration of the truth of the person's answers;
- (i) require the production of, and inspect and take copies of or of any entry in—
  - (i) any certificates or documents that are required to be kept under this Ordinance; and



- (ii) any other certificates or documents that the officer considers necessary for the inspection, examination or investigation; and
  - (j) require any person to afford the officer such facilities and assistance with respect to any matters or things within that person's control, or in relation to which that person has responsibilities, as the officer considers necessary to enable the officer to exercise any power conferred by this section.
- (2) A person must comply with a requirement imposed on the person under subsection (1).
- (3) A person who contravenes a requirement made by an authorized officer under subsection (1)(a), (c), (d), (e), (f), (g), (h)(i), (i) or (j) commits an offence and is liable to a fine at level 6.
- (4) A person who, without reasonable excuse, contravenes a requirement made by an authorized officer under subsection (1)(b) or (h)(ii) or (iii) commits an offence and is liable to a fine at level 6.

**13. Deficiency revealed in relation to ships in exercise of powers under section 12(1)**

- (1) If the exercise of a power in relation to any ship under section 12(1) reveals a deficiency, the Director may give a direction to the owner or the master of the ship requiring the owner or the master to cause the ship not to proceed to sea until the deficiency is rectified.
- (2) An owner or master to whom a direction is given under subsection (1) must—
  - (a) comply with the direction;
  - (b) take steps to rectify the deficiency; and

- (c) inform the Director once the deficiency is rectified.
- (3) The owner and the master of the ship each commits an offence if any of the requirements in subsection (2) is contravened without reasonable excuse.
- (4) A person who commits an offence under subsection (3) is liable—
  - (a) on conviction on indictment—to a fine at level 6; or
  - (b) on summary conviction—to a fine at level 3.
- (5) If an offence under this section is committed, or would have been committed, by the owner or the master of a ship due to the act or omission of another person, that other person also commits the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the owner or the master.

**14. Deficiency revealed in relation to premises used as ship recycling facilities in exercise of powers under section 12(1)**

- (1) If the exercise of a power in relation to any premises used as a ship recycling facility under section 12(1) reveals a deficiency, the Director may give a direction to the operator of the ship recycling facility requiring the operator to cause the facility not to operate ship recycling until the deficiency is rectified.
- (2) An operator to whom a direction is given under subsection (1) must—
  - (a) comply with the direction;
  - (b) take steps to rectify the deficiency; and
  - (c) inform the Director once the deficiency is rectified.
- (3) The operator of the facility commits an offence if any of the requirements in subsection (2) is contravened without reasonable excuse.

- (4) A person who commits an offence under subsection (3) is liable—
  - (a) on conviction on indictment—to a fine at level 6; or
  - (b) on summary conviction—to a fine at level 3.

**15. Obstruction of authorized officers, providing false information, making false statements or signing false declarations**

- (1) A person must not—
  - (a) wilfully obstruct an authorized officer in the exercise of any power conferred by section 8, 9, 10 or 11;
  - (b) provide information that the person knows is false, or recklessly provide information that is false, in purported compliance with a requirement under section 12(1)(h)(ii); or
  - (c) make a statement or sign a declaration that the person knows is false, or recklessly make a statement or sign a declaration that is false, in purported compliance with a requirement under section 12(1)(h)(iii).
- (2) A person who contravenes subsection (1)(a), (b) or (c) commits an offence and is liable to a fine at level 6.

**16. Reasonable excuse**

- (1) This section applies if a provision of this Ordinance that creates an offence makes a reference to a reasonable excuse for an act or omission.
- (2) The reference to a reasonable excuse is to be construed as providing for a defence to a charge in relation to the act or omission.
- (3) A person is to be taken to have established that the person had a reasonable excuse for the act or omission if—

- (a) sufficient evidence is adduced to raise an issue that the person had such a reasonable excuse; and
  - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
-

## **Part 4**

### **Exemption**

#### **17. Director may grant exemptions**

- (1) The Director may exempt—
  - (a) any ship, or class or description of ships; or
  - (b) any ship recycling facility,from any of the requirements of this Ordinance, either absolutely or subject to the conditions that the Director may specify.
- (2) The Director may alter or cancel an exemption granted under subsection (1).
- (3) If an exemption is granted under subsection (1) subject to conditions, the exemption is not to have effect unless the conditions are complied with.

---

## Part 5

### Miscellaneous

#### 18. Access to Convention

The Director is to—

- (a) keep a copy of the English and Chinese texts of the Convention (*specified texts*) at the office of the Director; and
- (b) allow the public to inspect the specified texts during normal business hours free of charge.

---

## Explanatory Memorandum

The objects of this Bill are to provide for the safe and environmentally sound recycling of ships and to provide for related matters.

2. The Bill is divided into 5 Parts.

### Part 1—Preliminary (Clauses 1 to 3)

3. Clause 1 sets out the short title and provides for commencement.
4. Clause 2 provides for the definitions necessary for the interpretation of the Bill, including *authorized officer*, *Convention*, *Convention country*, *Director*, *domestic premises*, *Guidelines*, *hazardous material*, *Hong Kong ship*, *international voyage*, *non-domestic premises*, *non-Hong Kong ship*, *operator*, *recognized organization*, *ship*, *ship recycling* and *ship recycling facility*.
5. Clause 3 provides for the extent of application of the Bill in relation to certain ships that are engaged, or have been engaged, in international voyages.

### Part 2—Regulations (Clauses 4 and 5)

6. Clause 4 empowers the Secretary for Transport and Logistics (*Secretary*) to make regulations to provide for the safe and environmentally sound recycling of ships, to give effect to the Convention, to require compliance with any international agreement and any of its referenced international instruments that relate to the safe and environmentally sound recycling of

ships, and to provide for any matters required or permitted to be prescribed under the Bill.

7. Clause 5 further elaborates, without limiting clause 4, the powers of the Secretary to make regulations.

### **Part 3—Inspection (Clauses 6 to 16)**

8. Clause 6 empowers the Director of Marine (***Director***) to authorize any public officer to be an authorized officer. An authorized officer may exercise the powers or perform the duties that are conferred or imposed on the Director under the Bill.
9. Clause 7 empowers the Director to delegate to any other public officer the exercise or performance on the Director's behalf of any of the functions conferred or imposed on the Director under the Bill.
10. Clause 8 provides for the power of authorized officers to board ships.
11. Clauses 9, 10 and 11 provide for the powers of authorized officers to enter premises used as ship recycling facilities under certain circumstances.
12. Clause 12 provides for the powers of authorized officers to inspect, examine, etc. ships and premises used as ship recycling facilities, and provides for the offences and penalties for contravening a requirement made by an authorized officer under clause 12(1).



13. Clause 13 empowers the Director to give directions if the exercise of a power in relation to any ship under clause 12(1) reveals a deficiency, and provides for the offences and penalties for contravening a requirement in clause 13(2).
14. Clause 14 empowers the Director to give directions if the exercise of a power in relation to any premises used as a ship recycling facility under clause 12(1) reveals a deficiency, and provides for the offence and penalties for contravening a requirement in clause 14(2).
15. Clause 15 provides for the offence and penalty for obstruction of an authorized officer in the exercise of any power conferred by clause 8, 9, 10 or 11, and providing false information, making false statements and signing false declarations, in purported compliance with a requirement under clause 12(1)(h)(ii) or (iii).
16. Clause 16 provides that a reference to a reasonable excuse in an offence under the Bill is to be construed as providing for a defence, and that only an evidential burden of proof is required to establish a reasonable excuse.

#### **Part 4—Exemption (Clause 17)**

17. Clause 17 empowers the Director to grant exemptions from any of the requirements of the Bill to any ship, or class or description of ships, and any ship recycling facility.

#### **Part 5—Miscellaneous (Clause 18)**

18. Clause 18 provides for public access to the English and Chinese texts of the Convention.